

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RICHARD J. TESTA, JR., individually, and on behalf of all others similarly situated,

Plaintiff,

-against-

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., JOHN DOES 1-50 (said names being fictitious individuals), and ABC CORPORATIONS 1-50 (said names being fictitious companies, partnerships, joint ventures and/or corporations),

Defendants.

Civil Action No. 07 CV 8320 (AKH)

**MOTION TO ADMIT COUNSEL  
PRO HAC VICE**

Pursuant to Local Rule 1.3(c) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, I, A. Michael Weber, a member in good standing of the Bar of this Court and attorney for Defendant, Merrill Lynch, Pierce, Fenner & Smith, Inc. hereby move this Court for an Order allowing the admission pro hac vice of Malcolm A. Heinicke to assist in the representation of Defendant in this litigation.

Applicant's Name: Malcolm A. Heinicke  
Firm Name: Munger, Tolles & Olson LLP  
Address: 560 Mission Street, 27<sup>th</sup> Floor  
City/State/Zip: San Francisco, CA 94105-2907  
Phone Number: (415) 512-4000  
Fax Number: (415) 512-4077

12/28/07  
S.D. of N.Y.  
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FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Malcolm A. Heinicke is a member in good standing of the Bar of the State of California. There are no pending disciplinary proceedings against Mr. Heinicke in any State or Federal court.

Dated: December 21, 2007

New York, New York

Respectfully Submitted,



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A. Michael Weber (AW-8760)  
LITTLER MENDELSON  
A Professional Corporation  
885 Third Avenue, 16<sup>th</sup> Floor  
New York, NY 10022-4834  
(212) 583-9600  
(212) 832-2719 (fax)  
[mweber @littler.com](mailto:mweber@littler.com)

Attorney for Defendant  
Merrill Lynch, Pierce, Fenner & Smith, Inc.

**AFFIRMATION OF SERVICE  
BY U.S. MAIL**

STATE OF NEW YORK      )  
                                 ): ss:  
COUNTY OF NEW YORK    )

**Lisa R. Norman**, an attorney at law duly admitted to practice before this court, affirms the following under penalties of perjury:

1.      I am not a party to this action, am over the age of eighteen years, and reside in New York, New York.

2.      On December 28, 2007 I served the within **Motion To Admit Counsel Pro Hac Vice, Affidavit of A. Michael Weber In Support of the Motion, Certificate of Good Standing for Malcolm A. Heinicke, and Proposed Order for Admission Pro Hac Vice** in the instant case by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Postal Service addressed as follows:

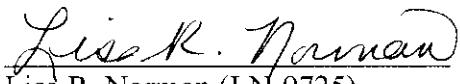
**Adam C. Mayes, Esq.**  
Lovell Stewart Halebian LLP  
500 Fifth Avenue  
New York, NY 10110

**John Halebian, Esq.**  
Lovell Stewart Halebian LLP  
500 Fifth Avenue  
New York, NY 10110

**Kenneth A. Elan**  
Kenneth A. Elan, Esq.  
217 Broadway  
New York, NY 10007

3.      I am readily familiar with the Firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope above was sealed and will be deposited today with the United Postal Service in the ordinary course of business.

Dated: New York, New York  
December 28, 2007

  
Lisa R. Norman (LN-9725)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RICHARD J. TESTA, JR., individually, and on behalf of all others similarly situated,

Plaintiff,  
-against-  
, PIERCE, FENNER &  
N DOES 1-50 (said names  
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1-50 (said names being  
, partnerships, joint ventures  
,  
Defendants.

Civil Action No. 07 CV 8320 (AKH)

**AFFIDAVIT OF A. MICHAEL WEBER  
IN SUPPORT OF MOTION TO ADMIT  
MALCOLM A. HEINICKE  
PRO HAC VICE**

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., JOHN DOES 1-50 (said names being fictitious individuals), and ABC CORPORATIONS 1-50 (said names being fictitious companies, partnerships, joint ventures and/or corporations),

**A. Michael Weber**, being duly sworn, hereby deposes and says as follows:

1. I am a Shareholder with the law firm Littler Mendelson, P.C., resident in the firm's New York office, and a member of the bar of this Court. I submit this affidavit based on my personal knowledge of the facts set forth herein and in support of the motion of Defendant, pursuant to Rule 1.3(c) of the Rules of the United States District Courts for the Southern and Eastern Districts of New York, to permit Malcolm A. Heinicke to appear *pro hac vice* as an attorney for the Defendant in this action.

2. I am a member in good standing of the bar of the State of New York, and was admitted to practice law in 1973. I am also admitted to the bar of the United States District Court for the Southern and Eastern Districts of New York and am in good standing with these Courts.

3. Mr. Heinicke is a Partner with the law firm of Munger, Tolles & Olson LLP resident in the firm's San Francisco, California office. Upon information and belief, Mr. Heinicke is a member in good standing of the State Bar of California, having been admitted in 1998. No disciplinary proceedings have been instituted against him or are pending against him in any jurisdiction.

4. Mr. Heinicke has assured me that he is familiar with all rules relevant to the practice of law in the United States District Court for the Southern District of New York.

5. If Mr. Heinicke is admitted to practice before the Court pro hac vice, he has assured me that he will abide by the rules of this Court.

6. Accordingly, I am pleased to move the admission of Malcolm A. Heinicke, pro hac vice.

7. I hereby certify that the foregoing statements made by me are true. I understand that if any of the foregoing is willfully false, I am subject to punishment.

WHEREFORE, the undersigned respectfully requests that the motion to admit Malcolm A. Heinicke, pro hac vice, as attorney for the Defendant in this action, be granted.

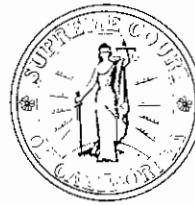
Dated: December 21, 2007  
New York, New York

Respectfully submitted,

By: A. Michael Weber  
A. Michael Weber (AW-8760)

Sworn to before me  
this 21<sup>st</sup> day of December, 2007

GREGORY S. WEISS  
Notary Public, State of New York  
No. 02NWE8136624  
Qualified in New York County  
Commission Expires Nov. 14, 2009



## Supreme Court of California

FREDERICK K. OHLRICH

*Clerk of the Court*

### CERTIFICATE OF THE CLERK OF THE SUPREME COURT OF THE STATE OF CALIFORNIA

**MALCOLM ALEXANDER HEINICKE**

*I, FREDERICK K. OHLRICH, Clerk of the Supreme Court of the State of California, do hereby certify that MALCOLM ALEXANDER HEINICKE was on the 16TH day of JANUARY 1998, duly admitted to practice as an attorney and counselor at law in all the courts of this state; and that his name now appears on the Roll of Attorneys as a member of the bar of this state in good standing.*

*Witness my hand and the seal of the court,  
this 18th day of DECEMBER, 2007.*

**FREDERICK K. OHLRICH**

*Clerk of the Supreme Court*

By Joseph Cornetta  
*Joseph Cornetta, Deputy Clerk*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

RICHARD J. TESTA, JR., individually, and on behalf of all others similarly situated,

Plaintiff,

-against-

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., JOHN DOES 1-50 (said names being fictitious individuals), and ABC CORPORATIONS 1-50 (said names being fictitious companies, partnerships, joint ventures and/or corporations),

Defendants.

Civil Action No. 07 CV 8320 (AKH)

**ORDER FOR ADMISSION  
PRO HAC VICE ON WRITTEN  
MOTION**

A motion having been made by A. Michael Weber, counsel for Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") for an Order pursuant to Rule 1.3(c) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York admitting Malcolm A. Heinicke pro hac vice to appear and practice in this Court in this action; and this Court, having reviewed the annexed Affidavit of A. Michael Weber,

**IT IS HEREBY ORDERED** that

Applicant's Name: Malcolm A. Heinicke

Firm Name: Munger, Tolles & Olson LLP

Address: 560 Mission Street, 27<sup>th</sup> Floor

City/State/Zip: San Francisco, CA 94105-2907

Phone Number: (415) 512-4000

Fax Number: (415) 512-4000

is admitted to practice pro hac vice as counsel for Defendant Merrill Lynch in the above captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court, including the Rules governing discipline of attorneys. If this action is assigned to the Electronic Case Filing

(ECF) system, counsel shall immediately apply for an ECF password at [nysd.uscourts.gov](http://nysd.uscourts.gov).

Counsel shall forward the pro hac vice fee to the Clerk of Court.

Dated: \_\_\_\_\_

New York, New York

**SO ORDERED:**

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United States District/Magistrate Judge